IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 516 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any

JJJJ

the respondent workman. By way of this petition, the corporation has challenged that award made by the labour court, Ahmedabad in Reference (LCA) 1969 of 1986 dated 13th November, 1992 whereunder the labour court has granted reinstatement with continuity of service with 25 per cent of the back wages for the intervening period. During the course of hearing, learned advocate Mr. Master appearing for the respondent has submitted that in view of the impugned award, the respondent has already been reinstated in service by the Corporation on 20th March,1993.

Ms. Thakkar appearing for the petitioner has submitted that the charge against the respondent workman was production of false certificate of Dr.R.B. Patel for justifying leave report for a period from 18th March,1983 to 17th December, 1983. She has submitted that the respondent has not proved the genuineness of the said certificate which was doubted by the corporation in the departmental inquiry. She has submitted that the respondent has not remained present in the inquiry proceedings and has not put forward his defence before the inquiry officer. She has submitted that the respondent was suffering from T.B. which has not been denied by the corporation but that fact has to be justified by the respondent by producing genuine medical certificate to that effect from the doctor and the certificate produced by the respondent was found to be bogus and false and that part of the matter was inquired by the Assistant Security officer by visiting personally Dr. R.B. Patel in presence of the respondent wherein Dr. R.B. Patel has categorically denied to have signed the said certificate which was shown to him. Not only that, according to her, the respondent has specifically admitted this part before the Assistant Security Inspector and thus, that part of the evidence has gone unchallenged and, therefore, the corporation was right in passing the order of dismissal dated 19th August, 1985. She has submitted that in view of such situation, when the departmental inquiry was not challenged by the workman concerned before the labour court and since the findings have been held to have been proved by the labour court, the labour court ought not to have made an award of reinstatement with continuity of service with 25 per cent of the back wages in favour of the respondent workman in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. According to her, past record of the respondent was produced before the labour court wherein in all 17 defaults were committed by the respondent out of which, nine defaults were relating to absenteeism and yet, the labour court has ignored the

past record of the respondent while passing the award in question and, therefore, the labour court has committed gross error and, therefore, the award in question is required to be quashed and set aside.

On the other hand, learned advocate Mr. Master has submitted that the respondent has completed more than 18 years' service as a conductor and further, factum of sickness and suffering from T.B. has also not been denied or disputed by the corporation and, therefore, in view of these circumstances, the corporation was not justified in passing the order of dismissal and the tribunal in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947, has found that the order of dismissal is harsh and, therefore, it has quashed and set aside the same and while ordering for reinstatement,has withheld back wages to the extent of 75 per cent and has granted only 25 % of the back wages. Thus, according to him, back wages to the extent of 75 per cent were denied by the tribunal by way of punishment and, therefore, now this Court should not interfere with such an award of the labour court. He has further submitted that since the respondent has already been reinstated in service on 20th March, 1993 and period of eight years has gone thereafter, therefore, now the present position of the respondent workman may not be disturbed.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. According to the charges levelled against the respondent workman, the respondent was on leave for a period from 18th March, 1983 to 17th December, 1983 and in support of leave report, the respondent had produced medical certificate issued by one Dr. R.B. Patel which was found to be false by the corporation and, therefore, chargesheet was issued against the respondent. On the basis of the said allegation, preliminary inquiry was carried out by the assistant security inspector and in such inquiry, he was examined by the competent authority and thereafter, assistant security inspector was examined in inquiry. He has made statement before the inquiry officer that he personally visited Dr. R.B. Patel and it was found that this certificate was bogus because it was not signed by him. Similarly, the workman has also admitted this fact in the statement which was obtained by the assistant security inspector. Asstt. Security Inspector Shri Solanki was examined by the representative for the workman and,thereafter,the respondent has given in writing before the inquiry officer that he wants to

examine Dr. R.B. Patel and, therefore, competent authority has send letter by Regd. Post A.D> letter to said Dr. R.B. Patel to remain personally present in departmental inquiry. Said letter was received by the said doctor but he had not remained present before the authority and, therefore, specific question was asked by the authority to the concerned respondent that now Dr. R.B. Patel is not remaining present and, therefore, do you want to examine him or not and the answer given by the respondent was in the negative that he does not want to examine Dr.R.B. Patel. Thereafter, the competent authority has given finding and ultimately, order of dismissal was passed against the respondent on 19th August, 1985.

All these aspects were considered by the labour court while passing the award in question. The labour court has relied upon the fact that the corporation was not challenging the fact that the respondent was suffering from TB and this has been admitted by the corporation in its written statement. The labour court has taken 19 years' service put in by the respondent workman, illness of tuberculosis and thereafter the labour court has passed the award in question and has granted reinstatement with continuity of service with 25 per cent of the back wages for the intervening period. While passing such award, the labour court has not appreciated the inquiry papers which were produced by the corporation before the labour court. No reasons have been given in support of the inquiry papers which were submitted by the corporation. Labour court considered only length of service and fact of illness suffered by the workman but has not considered the past record of the workman concerned though produced by the corporation before it. Therefore, considering these facts and also considering one more aspect of the matter that pursuant to the impugned award, the respondent has already been reinstated in service on 20th March, 1993 and is working with the corporation. Therefore, considering all these aspects and facts and circumstances of the case and also considering the fact that eight years have gone after reinstatement of the respondent, it would not be just and proper to disturb the present position of the respondent workman which would ultimately affect his livelihood. However, according to my opinion, considering the past record and over all circumstances of the case, the labour court was not justified in granting back wages of 25 per cent and that part of the award in question is required to be quashed and set aside while confirming the rest of the award in question.

Learned advocate Mr. Master has submitted that at the time of reinstatement, the respondent has been paid last drawn salary by the corporation which is now required to be refixed by giving all consequential benefits as per the award in question by giving continuity of service etc.

In the result, this petition is partly allowed. The award made by the labour court, Ahmedabad in Reference (LCA) No. 1969 of 1986 dated 13th November, 1992 is quashed and set aside in so far as it relates to grant of 25 per cent of the back wages for the intervening period. It is clarified that the award in question in so far as it relates to reinstatement with continuity of service has not been disturbed by this court. Petitioner corporation is directed to implement the award in question as modified by by this Court by giving benefit of continuity of service and to refix the salary of the respondent workman. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.26.03.2002. (H.K.Rathod,J.)

Vyas